

TOWN OF AMHERST - PLANNING BOARD RULES AND REGULATIONS

The Amherst Planning Board in accordance with Chapter 40A, Section 9 hereby adopts the following Rules and Regulations, governing the organization and conduct of the Board and also governing review and action on Site Plan Review applications and Special Permit applications. Unless otherwise noted, each Section applies to both Site Plan Review and Special Permit.

ARTICLE I - ORGANIZATION

SECTION 1 MEMBERS AND OFFICERS

The Planning Board shall consist of nine members appointed by the Town Manager. The members shall elect, on a yearly basis, a Chair, Vice-Chair and Clerk of the Board, as needed.

SECTION 2 THE CHAIR

The Chair shall be eligible to vote on all matters and shall decide points of order, unless overruled by a majority of the Board.

SECTION 3 THE VICE-CHAIR

The Vice-Chair shall act as Chair when the Chair is absent or is unable to perform his/her duties.

SECTION 4 THE CLERK

The Clerk shall act as Chair when both the Chair and Vice-Chair are absent or are unable to perform their duties.

In the absence of all officers, the Board members present at a meeting shall elect an acting Chair.

SECTION 5 PLANNING BOARD APPOINTMENTS

A majority of the Board shall:

- Appoint such standing subcommittees as may be constituted.
- Nominate for the Select Board's consideration one Planning Board member or other qualified person to serve as the Board's representative to the Design Review Board. The term of the appointment shall be for three years.
- Appoint or nominate Board members or qualified others to serve as Board representatives to such other boards, committees, and task forces as authorized by state law or the Amherst Town Government Act.
- Appoint one of its members to serve as a member of the Pioneer Valley Planning Commission. The appointment shall be for a period of one year.

SECTION 6 MEETINGS

Regular meetings of the Board are scheduled for the first and third Wednesdays of the month, in the

Town Room of Town Hall. Other meetings are scheduled as necessary. Agendas for the Board meetings are drawn up on the Friday prior to the meeting by the Planning Director. All agenda items shall be submitted to the Planning Department no later than noon on the Wednesday of the week prior to the meeting for inclusion on the agenda. The agenda for the meetings shall be filed with the Town Clerk and publicly posted in Town Hall at least 48 hours, not including Saturdays, Sundays or legal holidays, prior to such meetings. Agendas shall also be sent to the Town Manager, Building Commissioner, media, applicants and any interested parties.

The Board shall ordinarily schedule any public hearings at the beginning of meetings, following review and action on minutes. Regular Board business shall be scheduled following public hearings. Regular Board business conducted in meetings open to the public shall not constitute a public hearing. The Board will allow testimony only as it deems necessary. Unsolicited comments may be ruled out of order by the Chair.

ARTICLE II - APPLICATIONS

SECTION 1 APPLICATION FORM

Applications to the Board for either Site Plan Review or Special Permits shall be made on the official application form for either of these two procedures. Application forms are available in the Planning Department. The information required with the application as specified in Section 3 and the fee required in Section 4 shall be considered a part of the application and no application shall be deemed complete unless said information and fee are included.

SECTION 2 FILING

Applications to the Board for either Site Plan Review or Special Permits shall be filed with both the Town Clerk and the Planning Department. The date of receipt by the Town Clerk shall be considered the date on which the application has been filed with the Planning Board. All required information and the filing fee shall be required at the time of filing unless waived by the Board.

SECTION 3 INFORMATION REQUIRED

- A. Special Permits, Site Plan Reviews & Subdivisions** - Special Permit applications for OSCDs or Site Plan Review applications for cluster subdivisions may be filed at the same time as the Definitive Subdivision Plan. When filed simultaneously, the plans submitted with the Definitive Subdivision Plan shall be considered to meet the filing requirements for the Special Permit or the Site Plan Review (see Rules & Regulations Governing the Subdivision of Land). Additional information, such as building footprints, driveway layouts, open space design, draft of homeowner's covenants and plans for recreational facilities, may be required by the Board. Special Permit or Site Plan Review applications associated with OSCDs or cluster subdivisions, but not filed at the same time as the Definitive Subdivision Plan shall include six (6) copies and a signed and stamped original of the proposed subdivision plan with the application form. The contents of, and information on the plan, shall be in accordance with Section IV.C. of the Rules and Regulations Governing the Subdivision of Land.

For Planning Board Special Permit (SPP) applications not associated with an OSCD, the

submittal requirements shall be the same as those required for a Site Plan Review application.

B. Site Plan Review Submittals - Six copies and a signed and stamped original of the site plan, prepared by a Registered Professional Engineer, Land Surveyor, Landscape Architect or Architect at a scale of 1" = 20' or such scale as may be approved by the Board, on standard sheets, 24" x 36" in size, shall be submitted with the application. Information to be included with this submission shall consist of, but not be limited to, the following:

- 1) Name of property owner, developer and name of engineer/surveyor/landscape architect/architect.
- 2) Name of project, locus (at 1" = 200'), boundaries, date and scale of plan and north arrow.
- 3) All existing lot lines, easements, rights-of-way, size of property in square feet and zoning district.
- 4) Location and use of all existing and proposed buildings and structures, including dimensions and heights. Plans shall indicate the shape, size, height, location, and occupancy of all proposed structures, including expansion of existing structures on the site and ground floor plan(s), and building elevations(s) of the proposed structure(s). Building plans shall include accurate, scaled renderings of elevations, showing exterior facades indicating materials, architectural features and colors proposed, floor plans with dimensions showing schematic layout, use of interior spaces and means of egress. Building plans shall be prepared by a Registered Architect, as required by M.G.L. Chapter 112, unless exempted by the Massachusetts Building Code.
- 5) Location of all existing and proposed public or private streets, curb cuts, entrances and exits, parking areas, sidewalks, loading/service areas.
- 6) Location of all existing and proposed utility systems.
- 7) Existing and proposed contours and finished grade elevations, including location and volume of significant filling or excavations.
- 8) Location of all natural features, including significant watercourses, water bodies, bedrock outcroppings, stone walls and all trees, including drip lines, of eight (8) inch diameter at breast height (DBH) or larger on the subject property. In addition, all stone walls and trees, including drip lines, to be affected by clearing and/or construction within any portion of any public right-of-way immediately adjacent to the subject property shall also be shown, according to the provisions of M.G.L. Chapter 40, Section 15C (Scenic Roads Act) and MGL Chapter 87 (Shade Tree Act). The Board may waive any of the requirements for provision of the information under this section.
- 9) Location of containers and enclosures for storage and disposal of waste, recyclables and, where applicable, waste kitchen oil.
- 10) Number of parking spaces required and provided.
- 11) Elevations of exterior facades indicating type of color and materials to be used.
- 12) Calculation of total lot area, wetlands, building coverage and total lot coverage.

In addition, the following information/plans will normally be required by the Board:

- 1) **Landscape plan** - showing existing vegetation and all significant trees of eight (8) inch diameter at breast height (DBH) or larger, including drip lines, to be removed and to be saved, as well as proposed vegetation to be planted, including street and shade trees and parking lot screening, by species and type. Any intermittent or year round streams,

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- ponds or other wetlands shall also be shown.
- 2) **Lighting plan** - showing location and type of outdoor lighting and lighting fixtures, said lighting to be designed to minimize glare and light spillover onto adjacent properties, streets, and the night sky.
 - 3) **Soil erosion plan** - showing measures to be taken to prevent or reduce erosion both during and after construction.
 - 4) **Sign plan.**
 - 5) **Site management plan** – addressing, at a minimum, the following aspects of site management for residential, commercial, industrial and institutional uses, as applicable:
 - a) hours of operation
 - b) number of employees/tenants, and provisions for their parking
 - c) number of indoor/outdoor seats for patrons, including seasonal outdoor dining
 - d) management of patrons regularly gathering outdoors on the property, including those awaiting entry
 - e) live or pre-recorded entertainment, vent fans, HVAC equipment and other significant sources of sound
 - f) trash, recycling, and waste kitchen oil management (storage and disposal, including frequency of pick-up)
 - g) site lighting operation, including hours of illumination by location
 - h) storage for vehicles, materials, equipment and/or household goods
 - i) provisions and schedules for deliveries, loading and unloading, and take-out/delivery service, if any
 - j) on-site recreational facilities
 - k) grounds management, including a schedule of mowing, snow removal and care of landscaping, including care for trees, plantings and gardens
 - l) noise, odor, and dust mitigation measures
 - m) building maintenance, including projected schedules for repainting, repairs and related upkeep, and replacement schedules for site furnishings
 - n) for any residential rental use, a proposed lease and the following:
 - i) current emergency notification information
 - ii) current registration of all rental residential dwelling units in accordance with the applicable rental regulations of the Town of Amherst
 - o) any other aspects of site management the permit granting board or authority shall deem necessary for adequate review of the potential site impacts of the application
 - 6) **Traffic impact statement (TIS)** - said TIS to include the following:
 - a) Existing traffic conditions, including average daily traffic and peak hour volumes on adjacent streets.
 - b) Levels of Service (LOS) of intersections within 500' of the site or any nearby intersection clearly impacted by the development. LOS shall be defined and calculated as described in the Highway Research Board, National Academy of Sciences - National Research Council, Highway Capacity Manual, 1965, as hereinafter updated. In general LOS signifies the following qualities of traffic operation:

<u>Level of Service</u>	<u>Quality of Traffic Operation</u>
A	Freeflow, minimal delay.
B	Queues develop that occasionally may not be able to clear through one green light cycle at a signalized intersection.
C	Stable flow. Backups may develop behind turning vehicles.
D	Approaching unstable flow. Delay may be substantial (i.e., waiting through two cycles of a traffic signal).
E	Unstable flow, roadway is operating at capacity with long queues during the entire peak hour.
F	Forced flow, jammed intersection, long delays through entire peak hour.

- c) Projected number of vehicle trips to enter or depart from the site shall be estimated for peak hour and average daily traffic.
- d) Proposed pedestrian flow movement on the site.
- e) Impact of trips generated by the use on the site on the LOS of intersections within 500 feet or any clearly impacted nearby intersection.
- f) Impact of trips generated by the use on the site on the road capacities of existing adjacent streets.
- g) Sight distances and sight lines at the proposed entrance and exits.

C. Waiver - The Planning Board shall have the right to waive any of the items in A and B above, or to request additional data necessary to render a decision.

D. Cluster Subdivision & Open Space Community Development

- 1) *Sketch Plan* - All applications for a cluster subdivision or an OSCD with building lots shall include a sketch plan showing a standard subdivision that could realistically be approved by the Board on the parcel proposed for the cluster subdivision. The Board shall use the sketch plan to determine the number of lots that would be allowed under the cluster or OSCD plan.
- 2) *Homeowners/Condominium Association documents* - Proposed Homeowners/Condominium Association documents shall be submitted to the Planning Board for review and approval prior to the release of lots for the purposes of building.
- 3) *Affordable units* - For applications involving bonus provisions for the inclusion of

affordable units, the application shall include documentation demonstrating that the units required to be provided for low and moderate income households will be permanently available for such ownership under the provisions of the Zoning Bylaw, and available for a minimum of twenty years in the case of rental housing.

- 4) *Common Land management plan* – A detailed management plan shall be submitted with the Site Plan Review application for any cluster development proposed in a resource protection overlay zoning district, and for any Open Space Community Development, when the Common Land is to be retained by a private owner or a homeowners association corporation or trust. A Common Land management plan shall describe the proposed future management and use(s) of the land, which shall be reviewed by the Board in terms of their potential impacts on those natural resource(s) any applicable overlay zoning district is intended to protect and/or, for an open space community development, those resources described under Section 4.502 of the Zoning Bylaw.

A Common Land management plan shall include, but is not limited to, the following:

- a) A detailed description of the geographic extent, timing, and proposed types of all future uses of the Common Land, including farming, forestry, recreation and similar land uses.
- b) Plans and elevations of any proposed structures, paths and site alterations proposed in association with Common Land uses.
- c) Proposed methods and schedules of annual maintenance of landscapes and structures, where applicable, including the storage, use, presence and intended application of any oil, petrochemical product, pesticide, herbicide, fertilizer, or other hazardous leachable material.

Where applicable, the Board shall require that the use of hazardous leachable materials as an aspect of annual maintenance of Common Land be in accordance with Lawn Care Regulations of the Massachusetts Pesticide Board, 333 CMR 10.03 (30, 31), as amended, as a condition of approval of any management plan for a Site Plan Review or Special Permit approval under this section. However, this regulation shall not be construed as applying to any agricultural land use governed under the provisions of M.G.L. Chapter 131, Section 40, 24) or 310 CMR 10.04.

SECTION 4 FEES

4.0 General

All applications shall be accompanied by the appropriate fee as determined by the Planning Board list of the application fees.

4.1 Project Review Fees

4.10 Introduction

In accordance with M.G.L. Chapter 44, Section 53G, the Planning Board may impose project review fees for those applications which require the services of outside consultants for the review process due to the size, complexity, or scale of a proposed project; the need for additional expertise in the review; or because of the potential impacts of a project.

The Board may engage attorneys, engineers, planners, landscape architects, architects or other appropriate professionals.

4.11 Fee Payment

The Planning Board shall determine the amount of the initial deposit to be made and the amount of any additional funds that may be required during the review process.

The applicant shall pay such fees to the Town of Amherst and such fees shall be deposited in a special account with the Town.

4.12 Expenditure of Fees

Outside consultants retained by the Planning Board shall be paid from this special account. The expenditure of said fees shall be at the direction of the Planning Board, without further appropriation.

Said fees are to be expended only in connection with services rendered for the specific project for which the fees were collected.

4.13 Excess Fees

After completion of the Planning Board's review of a project, any excess fee amount, including interest, shall be refunded to the applicant or the applicant's successor in interest and a final report of said account shall be made available to the applicant or applicant's successor in interest.

4.14 Failure to Pay Fee

Failure to pay a Review Fee by the applicant shall be grounds for disapproval of the subject application.

4.15 Administrative Appeals

The choice of a consultant selected by the Planning Board for the review of an application may be appealed in writing to the Select Board by the applicant, provided such appeal is initiated within two weeks of the selection. The ground for such appeal shall be limited to claims that the selected consultant:

- 1) has a conflict of interest;
- 2) does not possess the minimum required qualifications. The minimum qualifications

shall consist of either an educational degree in or related to the field at issue or three years of practice in the field at issue or a related field.

The required time limits for action upon an application by the Planning Board shall be extended by the duration of the administrative appeal.

In the event that no decision is made by the Select Board within one month following the filing of an administrative appeal, the selection made by the Planning Board shall stand.

4.16 Reports

The Town Treasurer shall submit annually a report of said special account to the Chief Elected Board and Chief Administrative Officer of the Town.

The Town Treasurer shall cause said report to be published in the annual report the Town.

The Town Treasurer shall submit annually a copy of said report to the director of the Bureau of Accounts.

SECTION 5 DISTRIBUTION OF PLANS

The Board shall send transmittal forms, and copies of the plans where necessary, to appropriate Town boards/commissions/departments including, but not limited to, the Town Engineer, Building Commissioner, Conservation Commission, Historic Commission, Fire Chief, DPW, and the like. These boards shall have 35 days to submit their comments to the Planning Board.

ARTICLE III - PUBLIC HEARING

SECTION 1 NOTICE

Notice of hearings shall be advertised as required by Chapter 40A, Section 11, including notice to all parties of interest.

SECTION 2 SITE VISIT

The Board, or a designated subcommittee, shall make a site visit to the property that is the subject of the application. The applicant will be notified of the site visit. If the Board judges the application to be insignificant in its impact, the Board may waive the site visit.

SECTION 3 HEARING PROCEDURE

The Board shall schedule a public hearing within 65 days of the date of filing, unless the petitioner agrees in writing to an extension of this time period. Any such written agreement shall be filed with the Town Clerk.

All hearings shall be open to the public. The applicant shall appear on his/her own behalf or may be

represented by an agent. If the applicant or representative is not present and has not given advance notice of their inability to attend, the Board may act based on the information before it, may continue the hearing or may declare the petition withdrawn without prejudice, or may consider rebate of fees.

Prior to opening the hearing, the Chair shall:

- 1) Inquire whether any Board members, staff, or others need to recuse themselves from participating in the hearing or make disclosures at that time regarding potential or perceived conflicts of interest.
- 2) Declare that the provisions of the Mullin Rule are in effect, and summarize those provisions.
- 3) Describe the rules of conduct for the hearing, including but not limited to the following:
 - a) All persons must be recognized by the Chair before speaking;
 - b) Speakers must begin by identifying themselves by name, address, and any pertinent affiliations;
 - c) All questions/comments/remarks should be directed to the Chair, and not to the applicant, other speakers, staff, or others;
 - d) Presenters and speakers are expected to be brief and to the point—the Chair shall determine time limits for individual presentations if necessary, to ensure that all citizens and Board members have the opportunity to speak; and,
 - e) Speakers should focus on asking new questions or providing new information, and avoid repeating previous remarks.

The Chair shall open the hearing and proceed to take testimony in the following order: a) applicant's presentation; b) report on the site visit; c) information from Town staff; d) questions from the Board; e) comments and questions from the public; f) applicant's response; g) final comments and questions from the public, the applicant and staff.

The Chair shall then entertain a motion to close the public hearing or to continue the hearing to a date and time certain. Once the hearing has been closed, deliberations leading to a decision will begin at that same session, or will be postponed until later in the session or to a future date.

Written information from the applicant, staff, Town officials, or members of the public regarding an application shall be submitted to the Planning Department prior to or at the public hearing. Under the provisions of MGL Ch. 39, Section 23D, the conduct of public hearings held by the Planning Board shall be as follows:

- 1) A member of the Planning Board involved in an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. To be eligible to vote, the member shall certify in writing that they have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.

- 2) The Planning Board hereby adopts the following minimum additional requirements for attendance at scheduled hearings under this section:
 - a) The provisions of this regulation shall only apply to members participating in adjudicatory hearings which take place over a period of two or more sessions conducted at public meetings. Board members shall not have access to this provision for public hearings lasting only a single session.
 - b) No Board member absent from the initial session of an adjudicatory hearing shall thereafter be eligible to vote on the application or matter under consideration. The provisions of this regulation shall only be available to Board members who are absent from a single session (but not the first) of a multi-session public hearing.

ARTICLE IV - DECISION

SECTION 1 REVIEW CRITERIA

The Board shall use the review criteria/design guidelines found in Section 11.24 of the Zoning Bylaw (for Site Plan Review), and Section 10.38 (for Special Permits), applicable criteria found in these Rules and Regulations and any other applicable sections of the Zoning Bylaw in reviewing and making a decision on applications before it.

SECTION 2 VOTING REQUIREMENTS

1) Special Permit

The concurring vote of at least two-thirds (2/3) of the full membership of the Board shall be required for any decision on a Special Permit application.

Only members who were in attendance at the public hearing may vote on any motion regarding an application. See Article III, Section 3, regarding voting requirements under the provisions of MGL Ch. 39, Section 23D.

2) Site Plan Review

The concurring vote of at least two-thirds (2/3), but not fewer than five (5), of the members of the Board participating and voting shall be required for any decision on a site plan application (abstaining members being considered not to be voting).

Only members who were in attendance at the public hearing may vote on any motion regarding an application. See Article III, Section 3, regarding voting requirements under the provisions of MGL Ch. 39, Section 23D.

SECTION 3 DECISION AND FINDINGS

The Board's written decision shall consist of either:

- a) Approval of the application based on specific findings that the project meets all of the necessary sections of the Bylaw.
- b) Denial of the application based on a finding that either: (i) insufficient information was submitted with the application in order for the Board to adequately review the proposal; or (ii) a determination, based on specific findings, that the project does not meet the applicable sections of the Zoning Bylaw.
- c) Approval of the application, subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with appropriate sections of the Bylaw.

The Board's decision shall be filed with the Town Clerk and mailed to the applicant within ninety (90) days of the close of the public hearing, unless extended by written agreement with the applicant, said agreement to be filed with the Town Clerk.

Notice of the decision shall be made in accordance with Chapter 40A, Section 11.

SECTION 4 WITHDRAWAL

An application may be withdrawn without prejudice by notice in writing to the Town Clerk, with a copy submitted to the Planning Department, at any time prior to the publication of the notice of the public hearing. Requests to withdraw after publication date of the notice may be granted only by permission of a majority of the Board.

ARTICLE V - EXPEDITED REVIEW

In instances where the proposed use will have minimal or no impacts, either due to the insignificance of the request or the request is merely to change one similar use for another or for similar reasons, the Board may use an expedited review procedure. This procedure shall include, but not be limited to, the following:

- a) The public hearing shall be scheduled as soon after the thirty-five (35) day review period as possible. If the Planning Board receives responses from all appropriate boards and commissions prior to the expiration of the thirty-five day period, the Board may then schedule the public hearing within this time period.
- b) The Board may waive all requirements for the submission of the application and plans that it deems unnecessary for the expedited review.
- c) The Board may waive the site visit requirement.
- d) The Board may render a decision on the same night of the public hearing if no additional information is necessary and no adverse impacts have been identified.

ARTICLE VI - ADOPTION

These Rules and Regulations are hereby adopted October 5, 1988 by the Planning Board.

Amended: August 2, 1989

Amended: October, 1998

Amended: January 21, 2004

Amended: March 3, 2004

Amended: April 1, 2009

Amended: June 3, 2009

Amended: July 7, 2010

Amended: December 15, 2010

Amended: October 17, 2012